

**DECISION MEMORANDUM ON THE CLAIMS RESOLUTION  
PROCESS**

There can be no question that there has to be sufficient and adequate evidence of a contractual relationship with an insurance company. In the first instance, the Claimant is invited to provide whatever evidence he or she has. But, whatever evidence the Claimant can offer - and even if there is none - the Companies have undertaken, as part of the claims process, to carry out a thorough investigation of their records and, where appropriate, a search of outside archives, to help the Claimants find evidence of the contractual relationship, even if they themselves have none. Satisfaction of that requirement will be determined in accordance with the ICHEIC Relaxed Standards of Proof, which are to be interpreted liberally in favor of the Claimant; all parties have agreed to this basic concept. There is intentionally built into the Standards wide latitude and flexibility. Indeed, it is understood that, under the "catchall" provision, anecdotal evidence, as well as other documentary evidence not specifically mentioned or contemplated in the Standards, will be considered in determining the existence of a policy.

When the existence of the contract has been established, the burden shifts to the Companies. At this point, the relevant details of the contract ( e.g., type of insurance, value insured, premium, and duration) need to be determined. This will be done using evidence from the Claimant, the Company, or other outside sources.

Once the existence and details of the contract or claim are established, the Company must establish the status of the contract - i.e., what, if any, adjustments are to be made to the value of the claim (i.e., loans, forfeitures, redemptions, payment of insured benefits, etc.). Most importantly, the Company will have to demonstrate, either from its own records or from external documentary evidence, that it has fulfilled its contractual obligation to the policyholder or to a proper beneficiary.

The Companies' ability to satisfy this burden will depend, in part, on the adequacy of the records available to them. It is understood that some Company records have been destroyed, either during the war or in the normal course of business, making it impossible to state with complete certainty whether any particular claim was paid or otherwise reduced in value. A Company may present any evidence from its own records or external sources

which would prove that a payment was made to the proper insured or beneficiary.

If a Company is unable to demonstrate that a policy has been paid or that the value should otherwise be adjusted, the full payment of the sum insured under the policy (as calculated under the ICHEIC valuation formulas) will be offered, where the face value is known; in cases where there is no evidence of the sum insured under the policy, the full average value (as calculated under the ICHEIC formulas) will be offered. These offers would be made without having to wait for the second stage audit of Company records, as had originally been proposed.

The relaxed Standards of Proof and the approach to the burden of proof of payment set out above will also need to be applied in assessing any claims falling into the category established by §8A1 of the MOU.<sup>1</sup> It would be unacceptable to create different Standards of Proof for this category, since to do so could, in the case of §8A1, create an incentive for Claimants to make a claim which did not name a particular insurance company if it appeared that such a claim was more likely to result in a payment than a claim on a signatory company. Clearly, any payments made on §8A1 claims under this approach would need to be in line with whatever valuation rules are eventually agreed for policies falling under that fund.

As with other claims, it must be a part of our approach that §8A1 claims are systematically checked against the relevant external archives, wherever that is practical and cost effective. The Claims Group has helpfully agreed that ICHEIC staff should arrange some pilot work on the use of the external archives. In relation to the nationalized policies, I will arrange to explore with the Polish and Czech and, if possible, other Eastern European authorities whether and how any records they possess could be used in investigating claims.

We will also need to decide in relation to §8A1 claims who should take the first decision on whether or not a particular claim meets the Standards of

---

<sup>1</sup> Decision is reserved as to claims under §8A2. I believe that this issue should be decided in the ongoing discussions concerning the valuation of Eastern European claims. It is my hope that all questions outstanding - including those of valuation and Standards of Proof relating to §8A2 claims - will be resolved by the parties. However, if no agreement is reached by July 16, the Chair will decide on all such issues.

Proof, since no single signatory company could reasonably be expected to do so. I will make a proposal on this for decision at our July meeting.

I understand that, in the context of tiering discussion, there has been debate over the proposition that any claim submitted, even if based exclusively on anecdotal or unofficial documentary evidence, should automatically be entitled to payment. While I do not accept this proposition, I am satisfied that the "catchall" provision in the Standards of Proof is broad enough to allow such evidence to be considered in light of all surrounding evidence and circumstances, although it does not *ipso facto* give rise to a valid claim.

Decisions based on these factors, like all other decisions, will be subject to the Appeals Procedure. Those hearing and deciding the appeals will be authorized to make *de novo* reviews of the record (including evidence offered under the "catchall" provision). This procedure will insure that those with strong evidence of a claim, even if purely anecdotal, as well as those with less persuasive evidence, will be given an appropriate and fair review while maintaining the integrity of the process. The Companies will be afforded the opportunity to show that payments or other adjustments were made, but Claimants will not be unduly prejudiced by a lack of records or a presumption of payment where proof is unavailable.

In short, the process established in the relaxed Standards of Proof allows the Claimants to bring in anecdotal and unofficial documentary evidence for assessment, and guarantees that any claim (irrespective of what evidence the Claimant can produce) will be thoroughly researched to see if conclusive evidence of the contract can be found; but it also avoids, as I am convinced we must, the risk to the integrity of the ICHEIC process which would arise if we were committed to making payments on the basis of anecdotal or unofficial documentary evidence, irrespective of its strength and plausibility.

The Claims Working Group will implement the process as stated.